

# **National Foreclosure Mitigation Counseling Program Events of Default and Remedies Policy**

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# National Foreclosure Mitigation Counseling Program

## Events of Default and Remedies Policy

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# National Foreclosure Mitigation Counseling Program

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### I. Introduction

The National Foreclosure Mitigation Counseling (NFMC) Program was launched in December 2007 with funds appropriated by Congress to address the nationwide foreclosure crisis by dramatically increasing the availability of housing counseling for families at risk of foreclosure. The Congressionally-chartered Neighborhood Reinvestment Corporation, doing business as NeighborWorks® America (NeighborWorks), developed and manages the NFMC Program and distributes funds to competitively selected HUD-Approved Housing Counseling Intermediaries (Intermediaries), State Housing Finance Agencies (HFAs), and chartered members of the NeighborWorks network (NWOs) to provide foreclosure counseling in all 50 states, its territories, and the District of Columbia. These Grantee organizations, in turn, provide the counseling services, either directly or through Sub-grantee organizations. Over 1,300 counseling agencies operate under the program during a given funding round.

Because the NFMC Program is federally funded, NeighborWorks and the NFMC Grantees are accountable to Congress, the Office of Management and Budget, and the United States taxpayer. NeighborWorks routinely monitors NFMC Program progress and compliance of its NFMC Grantees. A Grantee can be found noncompliant through a number of measures, s, as delineated in the Funding Announcements and Grant Agreements which govern each funding round. This Policy sets forth the general process for handling: (1) Events of Default and (2) other areas of non-compliance or financial management concerns which may become Events of Default if not remedied.

NeighborWorks provides the *National Foreclosure Mitigation Counseling Program Events of Default and Remedies Policy* to both help Grantees understand what issues can cause an Event of Default and possible consequences, and to assure Grantees that NeighborWorks will work with them to remedy these issues. NeighborWorks encourages Grantees to discuss any difficulties meeting compliance measures with NFMC Program staff. If compliance Findings are made, NeighborWorks will work cooperatively and efficiently with Grantees to remedy those issues in a timely manner, so that the important services they make available to homeowners can continue.

Section II of this Policy describes the method in which compliance requirements are conveyed and what resources are available to help Grantees understand the requirements. Section III provides an overview and sets forth the general process governing the handling of Events of Default in the NFMC Program. Section IV provides information on how NeighborWorks responds to reports of non-compliance or financial management concerns that can become Events of Default if not remedied. Section V outlines the appeal process.

This Policy governs the NFMC Program's Counseling component. Additional factors that apply to the NFMC Program's Legal Assistance component are found in the Legal Assistance Funding Announcement, Grant Agreement and subsequently-issued program guidelines.

Questions regarding this Policy should be addressed to:

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## **II. Conveyance of Compliance Requirements and Resources**

A. Conveyance of Requirements. NFMC compliance requirements are outlined for Grantees in the following documents, which all Grantees agree to upon acceptance of the NFMC grant award:

1. NFMC Funding Announcement
2. Notice of Intention to Award Funds
3. NFMC Grant Agreement, and all applicable laws (federal, state, and local) and OMB Circulars (i.e., A-110, A-133, A-102, A-87) as referenced
4. NFMC Guidance Memoranda that is posted on the NFMC Members' Site (e.g., Guidance on Proper Disposal and Protection of Client Information)
5. National Industry Standards for Foreclosure Intervention Counseling

B. Resources. NeighborWorks has a team of staff dedicated to ensuring the quality of foreclosure counseling provided under the NFMC Program meets NWO standards and that Grantees are in compliance with the foregoing requirements. There are many resources available to assist Grantees in understanding the program's compliance requirements, including:

1. Individualized web-ex trainings and program manual for first-time Grantees or new grant management staff to facilitate understanding of program requirements.
2. Access to the NFMC Members' Site which has over 9,000 active members and links to reference materials such as:
  - a. Funding Announcement
  - b. Grant Agreement
  - c. Guidance Memoranda
  - d. Forms that counselors can use that comply with NFMC Program requirements, such as a sample Action Plan, a sample documentation checklist, quality control and compliance expectations prior to program reviews, sample client authorization forms, etc.

3. An ongoing series of live web-ex trainings held the first Tuesday of every month on a variety of compliance topics. These are recorded and available for viewing on the NFMC Members' site. Examples include:
  - a. Overview of Random File Review Process
  - b. Overview of Standard Compliance Review Process
  - c. Overview of Quality of Counseling Review Procedures
  - d. Understanding the Difference Between Non-Service Related Compliance Findings and Service-Related Compliance Findings
  - e. Peer Sharing: Successful Strategies for Managing Sub-grantees
  - f. National Industry Standards for Foreclosure Intervention Counseling
  - g. Understanding Your NFMC Grant Agreement
4. Annual in-person Grantee meetings where Grantees are able to directly ask questions and interact with the third-party NFMC Quality Control and Compliance monitor.
5. Scholarships to attend NeighborWorks Training Institutes and place-based trainings providing classes on foreclosure intervention counseling in accordance with the National Industry Standards.
6. Free access to on-line e-learning courses providing foreclosure intervention counseling, including Foreclosure Basics, Understanding and Applying Foreclosure Intervention and Loss Mitigation Tools, and Using Effective Practices to Improve Your Foreclosure Program. All courses are developed in accordance with the National Industry Standards.
7. Access to a dedicated in-box ([nfmc@nw.org](mailto:nfmc@nw.org)) where Grantees can receive responses to their compliance-related questions.

### **III. Events of Default**

Below is the general process that NFMC follows when notifying Grantees that they are in default and working with them to remedy the default. This applies to all terms and conditions of the award at the time the Grant Agreement is signed and at any subsequent point if the status of an organization changes.

- A. Events of Default. Each of the following may be deemed an Event of Default under the NFMC Program:
  1. Any material failure by Grantee to comply with the terms and conditions of the Grant, whether stated in the Grant Agreement, a federal statute or regulation, NFMC Funding Announcement, applicable OMB Circulars, NeighborWorks-issued guidance memoranda,

NFMC audit requirements, Notice of Intention to Award Funds, or warranties and assurances.

2. Grantee fails to expend funds in accordance with NFMC Program requirements.
  3. Grantee fails to return funds, subject to recapture, to NeighborWorks within the required timeframe.
  4. Grantee becomes the subject of a federal, state, or local investigation related to foreclosure intervention counseling or the use of federal funds. The term “investigation” shall not include a regularly-scheduled review by a government agency (as required for licensure) or any labor or employment matters that do not relate to foreclosure intervention counseling or the use of federal funds.
  5. Grantee fails to continue as a going concern; becomes insolvent, defunct, or commences bankruptcy proceedings; or should any director, officer or senior manager of Grantee engage in fraud, willful misconduct, gross negligence or misappropriate any funds.
  6. Grantee's acts or omissions, in the sole and reasonable determination of NeighborWorks, may cause NeighborWorks significant reputational harm.
  7. Any Grantee misrepresentation in its application submissions which, if known by NeighborWorks, would have resulted in funds not being awarded.
- B. Discovery of Events of Default. NeighborWorks may become aware of Events of Default in any number of ways, including but not limited to:
1. Third party compliance reviews
  2. Random file reviews
  3. Reports of noncompliance by third parties such as media, government agencies, Grantee's clients, and/or whistle blowers
  4. Reviews of audited financial statements and OMB Circular A-133 audits
- C. Notice of Events of Default. If NeighborWorks becomes aware of an Event or Events of Default, NeighborWorks' Director of the NFMC Program shall give Grantee written notice of the occurrence of the Event or Events of Default and a reasonable opportunity to respond or to take corrective action as appropriate. NeighborWorks reserves the right to send notification of Event(s) of Default and all related subsequent correspondence to Grantee's Board of Directors or Trustees and to the United States Department of Housing and Urban Development. The notice shall identify:
1. Specified Event(s) of Default
  2. Grantee's required response or corrective action, if appropriate
  3. Specific instructions to provide only the relevant documents and information, and that

submission of excessive documentation may impede the quick resolution of Grantee's Event(s) of Default

4. Date by which the response or corrective action must be taken
  5. Support the Grantee can receive from NFMC staff and its agents
  6. Consequences for failing to respond or take corrective action
- D. Corrective Action Time Period. A Grantee provided with notice of Event(s) of Default will be given 15 calendar days and, if appropriate, assistance to take corrective action. During this time, NeighborWorks may disable Grantee's access to report cliets to the Data Collection System and freeze payments to Grantee or place Grantee on "Suspended" status if the Event(s) is considered to be severe and/or persistent.
- E. Successful Remedy of Event(s) of Default. If Grantee is able to address the Event(s) of Default to the satisfaction of NeighborWorks management, it shall be able to participate fully in the NFMC Program. NeighborWorks will provide the Grantee written notification of the successful remediation of the Event(s) of Default. NeighborWorks reserves the right to place additional conditions on the Grantee if appropriate and relevant to the Event(s) of Default, which may include but are not limited to:
1. Grantee's issuance of revised policies and procedures and evidence that such are followed
  2. Third party assurances that the Event(s) of Default is/are remedied
  3. Additional sampling of client files prior to draw disbursements
  4. Submission and review/acceptance of financial records prior to draw disbursements
  5. Placement of Grantee on a modified or reimbursable draw schedule
- F. Failure to Remedy Event(s) of Default. If Grantee is unable to address the Event(s) of Default to the satisfaction of NeighborWorks management within the timeframe specified in the Notice of Event(s) of Default, then Grantee shall be placed in "Suspended" status, and subsequent "Default" status, until the Event(s) of Default is/are remedied.
1. "Suspended" Status
    - a. Grantee will be issued a Notice of Suspension, which shall identify:
      - (1) The Event(s) of Default not remedied
      - (2) Whether or not the Grantee made any efforts to remedy and, if efforts were made, why those efforts were not satisfactory
      - (3) Grantee's required response or corrective action, if appropriate, including any additional documentation or information requests
      - (4) Specific instructions to provide only relevant documents and information, and that submission of excessive documentation may impede the quick resolution of Grantee's Event(s) of Default

- (5) Date by which corrective action must be taken to lift the suspension and to avoid further consequences
    - (6) Support the Grantee can receive from NFMC staff and its agents, if appropriate
    - (7) Further consequences for failing to respond or to take appropriate corrective action
  - b. Grantee shall have no longer than six months from the date of the Notice of Suspension to remedy the Event(s) of Default. NeighborWorks may extend “Suspended” status for a reasonable time period beyond six months under special circumstances at NeighborWorks’ sole discretion
  - c. While in “Suspended” status, Grantee will not be allowed to upload additional NFMC units of counseling or legal assistance into the Data Collection System, and all payments to Grantee shall be frozen.
2. “Default” Status. If, after being in “Suspended” status for six months, Grantee does not remedy the Event(s) of Default, it will be placed in “Default” status unless the suspension period is extended at the sole discretion of NeighborWorks America. If Grantee’s “Suspended” status is extended, Grantee will receive written notification with a new end date by which it must remedy the Event of Default. If Grantee is not granted an extension, it will be notified of its change of status to “In Default” as follows.
- a. Grantee will be issued a Notice of Default, which will identify:
    - (1) The Event(s) of Default not remedied
    - (2) Whether or not the Grantee made any efforts to remedy and, if efforts were made, why those efforts were not satisfactory
    - (3) Date by which corrective action must be taken to lift the default and to avoid further consequences
    - (4) The actions and consequences to be taken for failing to take corrective action and having default determined
  - b. NeighborWorks may take one or more of the following actions after sending Grantee a Notice of Default:
    - (1) Recover misspent or unspent funds
    - (2) De-obligate awarded but undisbursed funds
    - (3) Terminate Grant Agreement/award for cause. Upon termination of the award, all unspent funds (as determined by NeighborWorks based on Grantee’s allowed production) shall revert immediately to NeighborWorks, either in the form of recapture or de-obligation, or shall be redeployed in accordance with the requirements of the NFMC Program.
    - (4) Use information learned during the Events of Default process to inform future funding decisions
    - (5) Take other legally available remedies
- G. Impact of Default on Further Funding. NeighborWorks may consider Grantee’s Defaults, the severity of a Grantee’s quality control and compliance findings, and timeliness and completeness of corrective action in its grant application process and funding decisions for all Grantees. NeighborWorks may consider the Organizational Health Tracking System Rating for



NeighborWorks Organizations in its grant application process and funding decisions. Per the NFMC Funding Announcement for each grant round, all Applicants are allowed to request debriefings to understand all factors that contributed to the review of their applications and funding decisions.

#### **IV. NFMC Response to Reports of Non-Compliance or Financial Management Concerns**

Reports of Non-Compliance and Financial Management Concerns are *typically* raised to NFMC Program staff in the following five ways: (a.) Findings are discovered during NFMC on-site or remote annual Standard Quality Control and Compliance Reviews; (b.) Findings are discovered during NFMC random file review; (c) review of Applicants' audited financial statements, OMB A-133 audit reports, and management letters reveal internal control deficiencies or material weaknesses; (d.) third parties complain about Grantee's management of the funds or provision of services, such as the media, whistleblowers, or recipients of Grantee's services, or (e.) HUD notifies NFMC of compliance concerns or suspension from HUD Housing Counseling program..

- A. Standard Quality Control and Compliance Reviews. Approximately once every 18 months, NFMC conducts quality control and compliance reviews of all Grantees to ensure that requirements mandated by the terms of the Grant Agreement are being met. All Intermediaries and HFAs, regardless of whether they receive on-site or remote reviews, also have a subset of their Sub-grantee, Branch, or Affiliate locations reviewed.
1. Risk Rating System Factors. Budget permitting, all Grantees receive either an on-site or remote review. The type of review is determined through the application of a risk rating system which considers factors such as, but not limited to:
    - a. Size of the grant award
    - b. Years of experience providing foreclosure counseling
    - c. Findings from Audited Financial Statements, OMB Circular A-133 review and litigation disclosure
    - d. Increase in service over demonstrated experience, as determined by size of NFMC grant award in comparison to the Grantee's demonstrated experience.
    - e. NWO Organizational Assessment Rating
    - f. Experience participating in HUD monitoring and compliance
    - g. Previous years' Compliance and Quality Control ratings
    - h. Number of Sub-grantees, if applicable

2. Categories of Review. A set of standard procedures are applied during the review process. These procedures are designed to test whether Grantees are in compliance with the terms and conditions of the NFMC Program. The following documentation, practices, and procedures are among those reviewed:
  - a. Organization and Programmatic Compliance
    - (1) Most recent audited financial statements and OMB A-133 audit report
    - (2) Agency budget and NFMC expenditures
    - (3) Verification that the Grantee has secured the required match and it is credited to the foreclosure program
    - (4) Record Retention Policy
    - (5) Anti-Discrimination Policy
    - (6) Ability to provide services in the languages spoken by client populations
    - (7) Verification of Fidelity Bond Insurance policy naming NeighborWorks as an additional insured for \$100,000 or the amount of the NFMC grant, whichever is less, unless Grantee is an HFA and was granted a waiver for having comparable insurance
    - (8) Accessibility for persons with disabilities, as required by the Americans with Disabilities Act and other federal and state regulations (on-site only)
  - b. Client File Compliance
    - (1) Conflict of Interest Statement – signed by client (electronic or verbal “signatures” are okay within the limits of the law)
    - (2) Disclosure Statement – signed by client (electronic or verbal “signatures” are okay within the limits of the law)
    - (3) Authorization to release personal information – signed by client (electronic or verbal “signatures” are okay within the limits of the law)
    - (4) Privacy Policy – signed by client (electronic or verbal “signatures” are okay within the limits of the law)
    - (5) Review of at least 12 client files (selected randomly)
    - (6) Independent confirmations from clients regarding whether they received services from the Grantee, whether they were charged a fee for receiving services, and satisfaction with services received
    - (7) Documented proof of service (i.e., Action Plan, Budget, Verified Budget, Steps Taken upon the Action Plan, etc.)
  - c. Sub-grantee, Branch, or Affiliate Compliance. The Direct Grantee is responsible for ensuring compliance of all of its Sub-grantees, Branches, or Affiliates and resolving any Findings that are identified.
    - (1) Sub-grantee, Branch, or Affiliate office NFMC expenditures
    - (2) Timeliness of Grantee disbursement of funds to its Sub-grantees
    - (3) How the Grantee monitors its Sub-grantees, Branches, or Affiliates for compliance with NFMC and service quality
    - (4) How the Grantee ensures that Sub-grantees, Branches, or Affiliates meet or exceed the minimum requirements for HUD-approval
    - (5) How Grantee provides oversight of contractors and evidence that its procurement

procedures are not in violation of OMB circulars

- d. Meeting National Industry Standards for Counseling. During the on-site reviews, the quality of the counseling services provided is also reviewed. NFMC requires Grantees and their Sub-grantees, Branches, or Affiliates that provide counseling services to adhere to the following National Industry Standards appropriate for the level(s) of counseling they provide:
  - (1) Code of Ethics and Conduct
  - (2) Minimum Standard Activities for Foreclosure Intervention and Default Counseling
- e. Review of Counseling Procedures. Grantees are subject to the following during the quality control on-site review (when appropriate, recommendations for improvement will be provided for each agency based upon the National Industry Standards):
  - (1) Client
    - (a) Observation of at least two counseling sessions (with permission of client, not to exceed two hours per counseling session) for each on-site review of HFAs; Sub-grantees, Branches, or Affiliates of HFAs; Intermediaries; Sub-grantees, Branches, or Affiliates of Intermediaries; and NWOs.
    - (b) Review four client files for completeness; client urgency, intake and triage timeline; and whether the solution offered was appropriate.
  - (2) Counselor
    - (a) Provide training certificates that support that the counselor received training to be a counselor within 18 months of employment.
    - (b) Provide validation that the counselor performing NFMC counseling services was involved in on-the-job training and/or a coaching/mentoring program for at least 90 days after hiring, by providing certificates, policy memos, or verbal confirmation of training.
    - (c) Determine whether counselors meet or do not meet National Industry Standards as provided in the National Industry Standards for Foreclosure Intervention Counseling.
    - (d) Provide counselor-signed National Industry Standards Code of Ethics & Conduct.
- 3. Site Visit or Remote Review Report. All NFMC Grantees and Sub-grantees receive a site visit report or a remote review report from NFMC that requires acknowledgement of receipt by signature of the Executive Director or other authorized official, and may contain "Findings Noted" or "Recommendations for Resolving Findings."
  - a. Findings and Recommendations. If Findings are made they will be a direct result of:
    - (1) Missing required NFMC documentation
    - (2) Missing required language from NFMC documents
    - (3) Nonconformity with NFMC guidelines, as defined in the Grant Agreement, Funding Announcement, National Industry Standards, and any subsequent Program

Announcements,

- b. Initial Corrective Action Time Frame
  - (1) Grantees have 10 business days to respond to site visit report Findings and Recommendations. Grantees may request an extension which would be granted at the sole discretion of the NFMC Senior Program Manager for Quality Control and Compliance.
  - (2) Grantees must respond to all “Findings Noted” and include documented, actual evidence that it is in compliance with NFMC requirements.
  - (3) Grantee must provide only the documentation required to show that policies have been changed or compliance has been maintained. Submission of excessive documentation may impede the quick resolution of Grantee’s Event(s) of Default.
- c. Adequate Response to Site Visit or Remote Review Report. If Grantee response includes documented, factual evidence that Grantee is in compliance with NFMC requirements, NeighborWorks will validate that the findings have been cured by the Grantee, Sub-grantee, Branch, or Affiliate and notify the Grantee that findings are cured.
- d. Failure to Respond to Site Visit or Remote Review Report
  - (1) If within 10 business days the Grantee does not respond to the Site Visit or Remote Review report, written correspondence will be sent which includes:
    - (a) A reminder the response is past due
    - (b) A reminder that any issues with NFMC compliance should be addressed to NMFC
    - (c) A reminder that assistance is available from NFMC
    - (d) Notification that a lack of response within the next 10 business days will result in grant disbursements being placed on hold, the ability to upload new cases into the NFMC Data Collection System being revoked, and may result in serious funding consequences
  - (2) If after 20 business days the Grantee has still not responded, then further written correspondence will be sent which includes notification that grant disbursements are now on hold and Grantee will not be able to upload cases into the NFMC Data Collection System.
    - (a) The Grantee may also be placed on “Suspended” status depending on the seriousness of the findings
    - (b) At this point, or sooner, NeighborWorks may engage its District Offices to assist in soliciting responses from Grantees that are NWOs.
  - (3) If after 45 business days the Grantee has not responded, written correspondence will be sent stating that de-obligation and/or recapture of funds is imminent if findings were related to file insufficiencies and warning that a “Notice of Default” will be issued if response is not received within 15 business days.
  - (4) If after 60 business days the Grantee has not responded, then written

correspondence will be sent stating a “Notice of Event(s) of Default” suspension, de-obligation and/or recapture of funds, and other consequences, will begin. NWOs may face consequences such as a change in Organizational Health Rating and consideration of this non-compliance in other NeighborWorks America funding opportunities.

- e. Insufficient Response. If Grantee responds to the Site Visit or Remote Review Report in writing but does not include documentation to validate its Findings are cured, or documentation does not provide enough detail to cure the Finding, then:
- (1) NFMC will reach out to the Grantee to offer a conference call to discuss the Findings and what is required to cure. If the Grantee is an NWO, NeighborWorks will invite the District Director and Home Ownership Management Consultant to attend the call.
  - (2) Grantee will receive written correspondence from NFMC stating its response requires additional documentation for review. This correspondence will state that Grantee has 10 business days from the date of the written correspondence to provide required documentation.
  - (3) If within 10 business days the Grantee does not respond to the Site Visit or Remote Review report, written correspondence will be sent which includes:
    - (a) A reminder the response is past due
    - (b) A reminder that any issues with NFMC compliance should be addressed to NMFC
    - (c) A reminder that assistance is available from NFMC
    - (d) Notification that a lack of response within the next 10 business days will result in grant disbursements being placed on hold, the ability to upload new cases into the NFMC Data Collection System being revoked, and may result in serious funding consequences
  - (4) If after 20 days the Grantee has still not responded, then further written correspondence will be sent which includes notification that grant disbursements are now on hold and Grantee will not be able to upload cases into the NFMC Data Collection System.
    - (a) The Grantee may also be placed on “Suspended” status depending on the seriousness of the finding
    - (b) At this point, or sooner, NeighborWorks may engage its District Offices to assist in soliciting responses from Grantees that are NWOs.
  - (5) If after 45 business days the Grantee has not responded, written correspondence will be sent stating that de-obligation and/or recapture of funds is imminent if findings were related to file insufficiencies and warning that a “Notice of Default” will be issued if response is not received within 15 business days.
  - (6) If after 60 business days the Grantee has not responded, then written

correspondence will be sent stating a “Notice of Event(s) of Default” suspension, de-obligation and/or recapture of funds, and other consequences, will begin. NWOs may face consequences such as a change in Organizational Health Rating and consideration of this non-compliance in other NeighborWorks America funding opportunities.

- f. Continued Non-Compliance. A Grantee has failed to provide sufficient compliance when:
  - (1) Its responses were not in accordance with NFMC guidelines.
  - (2) It is not able to provide missing documentation from client files.
  - (3) It is not able to show evidence that NFMC policies are being followed.
- g. Severe and/or persistent non-compliance may include but is not limited to:
  - (1) Failures noted in Subsection IV(A)(3)(f) above
  - (2) Finances are not accounted for or not directed to the Grantee’s foreclosure counseling program
  - (3) Grantee fails to correct areas of non-compliance after two or more written communications
  - (4) Grantee has committed fraud
  - (5) Grantee has mishandled clients’ personally-identifiable information
  - (6) Grantee has been accused of violating local, state, or federal laws or is the subject of an investigation related to foreclosure intervention counseling or the use of federal funds. The term “investigation” shall not include a regularly-scheduled review by a government agency (as required for licensure) or any labor or employment matters that do not relate to foreclosure intervention counseling or the use of federal funds.
- h. Consequences for Persistent and/or Severe Non-Compliance. If the Grantee’s non-compliance is determined to be severe and/or persistent, then further review will be conducted and any of the following consequences may be invoked:
  - (a) NeighborWorks may issue Grantee with a “Notice of Event of Default,” “Notice of Suspension,” or other actions as described in Section III F, “Failure to Remedy Event(s) of Default” of this Policy.
  - (b) NeighborWorks may choose to conduct additional limited-scope compliance visits. During this time, the Grantee shall be placed in “Suspended” status until the review is complete and Findings are addressed to the satisfaction of NeighborWorks management.
  - (c) Grantee may be required to reimburse NFMC for funds paid to counsel the client(s) in question.
  - (d) NFMC may consider the severity of a Grantee’s quality control and compliance Findings and timeliness of correcting such Findings in its grant application process for all Grantees and in its Organizational Health Tracking Systems for NeighborWorks Organizations. This could result in decreased awards, or possibly no current or future funding opportunities.
  - (e) Termination, Recapture and/or De-Obligation. If compliance monitoring or any other investigation uncovers that the Grantee has engaged in misrepresentation about itself or its Sub-grantees, Branches, or Affiliates, NeighborWorks may

terminate the Grant Agreement and recapture the funds and/or rescind any obligation to disburse funds.

4. Expanded Testing of Client Files. If, during the standard compliance review or random file reviews, errors are identified in a population of client files selected for review, NFMC management may use an expanded approach that considers both the error rate and population size to determine if further testing is needed. Expanded client file testing will be conducted when 50% or more of the files tested contain at least one service-related finding. NFMC may elect to conduct additional file testing when 25% or more of the files contain findings that are particularly severe. NFMC will request and test another sample of files, this time equal to two times, or double, the number of files tested during the original procedure. During this time, the Grantee may be placed in "Suspended" status until the review is complete and findings are addressed to the satisfaction of NeighborWorks management. NFMC shall use its professional judgment to determine if other factors are warranted to expand the need for testing (e.g., consistent identification of errors in file testing, identification of fraud factors, etc.). If the following are not documented, a "Service-Related Finding" will result and correlate to level of counseling:

- a. Level 1 Files

- (1) Conduct intake including client name and address, basic demographic information, lender and loan information, and reason for delinquency
- (2) Develop budget for the client based on client's oral representation of their expenses, debts, and available sources of income
- (3) Develop written Action Plan for follow up activities to be taken by the client and review this Action Plan with the client

- b. Level 2 Files

- (1) Engage in budget verification during which the counselor reviews documented evidence provided by the client to establish true debt obligations
- (2) Steps to obtain a solution outlined in the written Action Plan are taken and documented using counseling notes that indicate date counseling occurred

- c. Level 4a

- (1) Referral from Servicer
- (2) Documentation of back end debt-to-income ratio
- (3) Establish that budget (including analysis of actual income, debt and expenses) must be tracked over the course of counseling
- (4) Create Action Plan which includes a timeline to eliminate unnecessary debt, minimize expenses, increase income, and increase savings
- (5) Establish follow-up schedule with counselor, with at least one additional appointment, as required by action plan. It is expected that a borrower will notify their counselor if they have a significant change in circumstances

- d. Level 4b

- (1) Verify income, debt, and expenses and calculate back end debt-to-income ratio at

- time of follow-up appointment
- (2) Status of borrower's payment on modified loan

B. Random File Reviews

1. Frequency. Once during every Grant Round, NFMC conducts random file sampling. Every Grantee is subject to these reviews, as are a sampling of sub-grantees.
2. Expanded Testing of Client Files. If, during the random file reviews, errors are identified in a population of client files selected for review, NFMC management may use an expanded approach that considers both the error rate and population size to determine if further testing is needed. Expanded client file testing will be conducted when 50% or more of the files tested contain at least one service-related finding. NFMC will request and test another sample of files, this time equal to two times, or double, the number of files tested during the original procedure. During this time, the Grantee may be placed in "Suspended" status until the review is complete and findings are addressed to the satisfaction of NeighborWorks management. NFMC shall use its professional judgment to determine if other factors are warranted to expand the need for testing (e.g., consistent identification of errors in file testing, identification of fraud factors, etc.)
3. Grantees will be given an opportunity to cure Findings from Random File Reviews, using the same method and timeframe as described in Section IV(A)(3)(b-h) above..

C. Audit Reviews

1. Initial Applicant Audit Review
  - a. Intermediaries and State Housing Finance Agencies (HFAs). As part of its grant application process, NFMC reviews and analyzes complete audit package for all Intermediaries and HFAs, including:
    - (1) The most recent fiscal year's audited financial statements
    - (2) OMB A-133 audit reports
    - (3) Management letters, organizational responses to the management letters, and any clarifying documentation requested
  - b. NeighborWorks Organizations (NWOs). NWO audits are regularly reviewed and analyzed as part of NeighborWorks' organizational assessment procedures, but are reviewed again during the NFMC grant application process.
2. Audit Ratings: For all applicant types - NWOs, HFAs and Intermediaries - a team of Certified Public Accountants reviews the audit opinion and litigation disclosure, as well as any findings identified as material weaknesses or internal control deficiencies. Each Applicant is issued a risk rating of low, medium or high.
  - a. LOW. Grantees with no contingencies related to their audits



- b. MEDIUM. Medium risk ratings are assigned to Applicants that have audits which indentify internal control deficiencies that are of concern to NFMC but not severe. Grantees with medium risk ratings are reviewed and discussed by NeighborWorks staff and may be subject to additional measures which may include but are not limited to those items listed in IV(E)(3) below, with consideration given to:
      - (1) Severity of the findings
      - (2) Whether the findings are related to the NFMC Program or, if not, whether the systems in question span several programmatic areas
      - (3) How persistent the findings are (i.e., whether the Applicant has a history of similar findings in past audits that have not been corrected)
    - c. HIGH. High risk ratings are assigned to Applicants that have severe control deficiencies that may impact the applicant's management of NFMC funds or ability to comply with program requirements, or less severe findings that have reoccurred over several years' audits. Grantees with high risk ratings must submit financial statements to be reviewed every six months and will be subject to additional measures which may include but are not limited to those items listed in IV(E)(3) below.
- 3. NFMC has developed the following remedies to mitigate its financial exposure if an Applicant is deemed to have a medium or high risk rating based on its audit but is still worthy of grant funds:
  - a. Contingent Award. Make awards contingent upon the submission, review, and satisfactory acceptance of an updated audit; third party assurance that steps taken to address the findings are sufficient; or proof that policies and procedures have been adequately updated.
  - b. Adjusted Draw Schedule. Place Grantees on one of two adjusted draw schedule options, dependent upon how severe or persistent the Grantee's challenges are:
  - c. Provisional Draw Schedule. Grantee receives a reduced amount of upfront funding (typically 10% counseling, 25% Program-Related Support and 10% Operational Oversight, if applicable). Grantee will be reimbursed the remainder of its counseling award monthly based on client file uploads. The remainder of the Program-Related Support funds is reimbursed monthly upon receipt of invoices and receipts, and the remainder of the Operational Oversight, if applicable, is reimbursed monthly in direct relation to the number of client files uploaded that month.
  - d. Reimbursable Draw Schedule. Grantees do not receive any upfront funding. Grantees are reimbursed for counseling monthly based on client file uploads. Program-Related Support is reimbursed upon receipt of invoices and receipts. Operational Oversight, if applicable, is paid in equal monthly installments.
- 4. Responses When Audit Findings Are Severe or Persistent. When Findings are more severe, directly related to the NFMC funds, and/or persistent, NFMC may use one of the remedies below. NFMC may consider the severity and persistent nature of a Grantee's audit findings in its grant application process for all Grantees and in its Organizational Health Tracking System for NeighborWorks Organizations.

- a. Use one of the remedies described in Subsection IV(C)(4) above
  - b. Not award grant funds
  - c. Place Grantee in “Suspended” status
  - d. Freeze current funding
  - e. Place conditions on the grant award that must be satisfied before funds are released
  - f. Rescind existing grant commitments
- D. Complaints. From time to time, NFMC Program staff will receive complaints about a Grantee from the parties below. In all cases where complaints emanate from third parties, such as homeowners, employees, media, or affiliates, NFMC requests that complaints be made in writing. Examples of third party complainants are:
- Homeowners that received or attempted to receive services from the Grantee
  - Former or current employees of the Grantee
  - Current or former Sub-grantees, Branches, or Affiliates of the Grantee
  - Peer organizations of the Grantee
  - Media
  - Whistleblowers
1. Notifying Grantee
    - a. NeighborWorks will contact the Grantee by telephone, and then provide a follow up email to schedule a review of the complaint made.
    - b. If the complainant is entitled to whistle blower protection under applicable federal (Whistleblower Protection Act) or state laws, these protections are provided.
    - c. If the complainant requests to remain anonymous, but is not subject to the Whistleblower Protection Act, Management will still investigate the claim, but will keep the source anonymous.
  2. Review of Complaint
    - a. Discussion. The NFMC Program Manager for Quality Control and Compliance (Program Manager) reaches out to both parties to understand the concerns.
    - b. Non-Compliance Allegation. If an allegation of non-compliance is revealed, the Program Manager or other staff will investigate and seek documentation from Grantee to determine whether the claim is true.
    - c. Additional Sampling/Testing. NeighborWorks may also choose to conduct limited-scope sampling or testing measures to confirm that the Grantee is not out of compliance or, if it was, to confirm that procedures are in place to assure the reasons for non-compliance have been corrected.

3. Response and Remedies. If the Grantee is determined to be out of compliance, NFMF may provide a “Notice of Event(s) of Default,” place Grantee in “Suspended” status, and work to address the Event of Default with Grantee as described in Section III of this Policy.
- E. Common Areas of Non-Compliance. Grantees are deemed to be out of compliance for any material failure to comply with the terms and conditions of the Grant. This Section details some of the more common reasons why Grantees may enter default. These are examples and not an exhaustive list. Remedies shall not be limited to those provided in these examples.
1. Non-Discretionary Events of Non-Compliance
    - a. OMB A-133 Filing Requirements
      - (1) Event: The Applicant for NFMF funds has not filed its OMB A-133 audit within nine months of the end of its fiscal year, which could result in no grant funds being awarded or an award contingent upon the Grantees’ submission of the report to NeighborWorks.
      - (2) Remedy: Grantee must submit the report and have it accepted by NeighborWorks.
      - (3) Special Note for NWOs: NeighborWorks’ *Charter Agreement* and *Investment and Grant Agreement* requires that they submit audited financial statements and OMB A-133 audits, when applicable, within six months of the end of their fiscal year. NWOs are not eligible for any funding unless these financial reports are submitted or an exception is granted by the District Director and the Director of Field Operations.
    - b. NFMF Program Quarterly Reports
      - (1) Event: The Grantee is not current on its quarterly reports, and cannot receive disbursements of NFMF funds.
      - (2) Remedy: Grantee must submit the report and have it accepted by NFMF.
    - c. Reporting of Sub-grantees
      - (1) Event: The Grantee has not notified NeighborWorks of changes to its list of Sub-grantees, Branches, or Affiliates during the grant round. The NFMF Data Collection System will not allow data for unrecognized/unreported Sub-grantees, Branches, or Affiliates to be uploaded.
      - (2) Remedy: Grantee must notify NeighborWorks of changes to its approved list of Sub-grantees, Branches, or Affiliates.
    - d. Updated Unaudited Financial Statements
      - (1) Event: A Grantee is not submitting updated unaudited financial statements on an ad-hoc basis as requested by NFMF. Typically, unaudited financial statements are requested because of serious audit deficiencies or if a Grantee has a high risk rating

based on its audit review at the time of the most recent application for funds. The Grantee will not receive disbursements of NFMC funds.

- (2) Remedy: The Grantee must submit financial statements and they must be reviewed and accepted by NeighborWorks.

e. Mandated Notification to NeighborWorks

- (1) Event: A Grantee has failed to notify NeighborWorks of an event or act that may be grounds for suspension or termination, including:
  - (a) Failure to continue as a going concern
  - (b) Becoming insolvent or filing for bankruptcy
  - (c) Becoming the subject of an investigation related to foreclosure intervention counseling or the use of federal funds. The term "investigation" shall not include i.) a regularly-scheduled review by a government agency (as required for licensure); or ii.) any labor or employment matters that do not relate to foreclosure intervention counseling or the use of federal funds.
  - (d) Its director, officers, or senior managers engage in fraud, willful misconduct or gross negligence
  - (e) Misappropriation of funds
- (2) Remedy: Failure to notify NeighborWorks is considered a material breach of the Grant Agreement. If NeighborWorks determines that the act constitutes an Event of Default, then NeighborWorks shall proceed as described in Section III of this document. If the action or conduct in question has been satisfactorily resolved and will not impede the Grantee's ability to deliver services as specified in the Grant Agreement, then NeighborWorks may allow continuation or resumption of services.

f. Matching Funds

- (1) Event: A Grantee fails to match the required funding they receive from the NFMC Program, as described in the Funding Announcement.
- (2) Remedy: Grant disbursements are not made unless the Grantee has provided evidence that it has raised or expended the requisite match. Further, Quality Control and Compliance Reviews test whether match funds were actually received and credited toward the Grantee's foreclosure program.

g. Compliance with All Legal Mandates

- (1) Event: A Grantee is in material breach for not complying with all mandated laws and regulations including:
  - (a) Proper use, storage, and disposal of any documentation containing personally-identifiable information
  - (b) Availability of translation services
  - (c) Handicapped accessibility

- (2) Remedy: The Grantee must submit documentation or other evidence that it is in compliance.
- h. “Not in Good Standing.” “Not in Good Standing” is defined as a failure to comply with the laws and regulations that govern the HUD housing counseling program, or the inability of a Grantee to draw down HUD housing counseling grant funds for any reason. Furthermore, Grantees that have received housing counseling grants from HUD in the past are “not in good standing” unless they: (i) continue to be a HUD-Approved Counseling Agency; and (ii) are not under investigation by HUD for possible non-compliance and funds have been withheld by HUD. Any Grantee that is not in good standing with the HUD housing counseling program will be simultaneously suspended from NFMC performance.
- (1) Obligation to Notify. Grantee is required to notify NeighborWorks in cases where it has been found to be “Not in Good Standing.”
  - (2) Reinstatement. In order to be reinstated to NFMC, Grantee must provide NFMC with official communication from HUD confirming that the issues that caused suspension from that program have been resolved and that HUD has removed the hold on disbursements to the Grantee or reinstated the Intermediary status of the Grantee, if applicable. Discretionary Events of Non-Compliance
- a. Specified Variances
- (1) Event: The Grantee is not performing within the allowable variances specified in the Grant Agreement to meet its service delivery requirements, including: levels of counseling, geographic areas and service to low-income and minority homeowners and zip codes.
  - (2) Remedy: When the Grantee is not within the allowable variances, NeighborWorks notifies the Grantee and requires it to respond with its plan to get back on track. NFMC reviews these plans and works with Grantee until an acceptable plan is submitted. The Grantee must pass a grant disbursement threshold monitored by NFMC staff to ensure that production is within the allowable variances. If, at its third draw, Grantee has not increased production to be within the variance, NFMC staff will review the documented best efforts reported by the Grantee to address the variance and may issue a waiver. Factors that may allow a waiver of the Grant Agreement requirements during this stage of review would include but are not limited to:
    - (a) Geographic area is not an Area of Greatest Need.
    - (b) Geographic area is being served satisfactorily by the program overall.
    - (c) Grantee was responsible for less than 15% of the overall proposed production for that geographic area.
    - (d) Production in immediately adjacent MSAs or rural areas of a state make up for the units of counseling not delivered in the contracted geographic area
    - (e) Documentation shows that clients were served in the under-reported geographic areas but billing was made to another funding source.
    - (f) Documentation shows that specific outreach and other efforts to specified

- populations and affiliate new Sub-grantees of contractors (if applicable) have not produced the required volume of borrowers to allow Grantee to meet its goal.
- (g) After disaffiliation of underperforming Sub-grantees, documentation shows that best efforts were made to substitute new Sub-grantees that serve the same service area, but those efforts have failed.

b. Spending Down Grant Award

- (1) Event: A Grantee is not spending down its grant award within the grant period.
- (2) Remedy: If a Grantee is not able to spend down its entire grant award during the grant period, NeighborWorks may allow it to request a six month extension, with the following in consideration:
  - (a) All submitted extension requests undergo a formal review process by NeighborWorks.
  - (b) Agencies that receive an extension will be given a modified (more frequent) reporting schedule and production goals to achieve during the extension period.
  - (c) If Grantee does not complete its required production within the six-month extension time period, all funds not earned are recaptured or de-obligated in accordance with the NFMC Recapture and De-obligation Policy.
  - (d) NeighborWorks reserves the right to extend the extension period at its sole discretion.

c. Poor Performance

- (1) Event: A Grantee that performs poorly under the NFMC Program in one or more of the following areas may have its award amounts reduced in subsequent funding rounds:
  - (a) Number and severity of quality control and compliance findings
  - (b) Grantee's inability to spend down grant funds within the grant period
  - (c) Lack of adherence to reporting requirements and deadlines
  - (d) Findings from HUD performance reviews
  - (e) Lack of timely submission of reports and requests for additional information
- (2) Remedy: Timely resolution of findings will help minimize compliance-related funding reductions in the next grant round, as prescribed in the funding rubric in place for that grant round.

## V. Appeals of Default Conditions and Determinations of Non-Compliance

As stated in the Funding Announcements governing each round, Grant Award decisions are not appealable. This section refers only to appeals of default conditions or determination of non-compliance. See section V(B)(4) below.

A. Handled by Office of the Chief Executive Officer

1. One Appeal. A Grantee will have one chance to appeal to the office of the Chief Executive Officer of NeighborWorks.
2. Designation to a Senior Officer. The CEO shall have the option to hear the appeal or designate it to a senior officer of NeighborWorks, including the Chief Financial Officer, Chief Operating Officer, or General Counsel.
3. Appeal Decisions Are Final. Decisions made by the CEO or designee are final. No further appeals by Grantees to NeighborWorks American shall be allowed.

B. Eligibility

1. Event of Default Finding. Grantees must have had an Event of Default finding determination per Section III, "Events of Default."
2. Good Faith. Whether or not suspension has resulted, Grantees must show good faith in having worked to remedy the Findings that have resulted in an Event of Default.
3. Premature Filing of Appeal. Grantees that are in the process of having their Event(s) of Default remedied are not eligible for appeal, and any request will be deemed premature.
4. Consequences for Significant Deficiencies. Appeals may only be taken when one of the following consequences for significant deficiencies has been taken by NeighborWorks:
  - a. Funds rescinded
  - b. Disbursements held/funding suspended
  - c. Future funding prohibited
  - d. Termination, recapture or de-obligation of funding

C. Grantee Filing of the Request for Appeal

1. All notices of appeal will be sent to the Office of the Chief Executive Officer of NeighborWorks, with a copy to the Director of the NFMC Program, via trackable overnight delivery or registered mail, including all required documentation.
2. The Grantee must postmark the Appeal Filing documents to the Office of the CEO within seven calendar days of the Notice of Default date.
3. Submitted appeals must include the following documentation:
  - a. Summary. A summary of no more than two pages that chronicles the Event(s) of Default that is/are the subject of the appeal, the good faith attempts to remedy the Findings

during one or more compliance time frames, the actions taken by NeighborWorks, and the Grantee's defense to the actions taken.

- b. Notice of Event(s) of Default. The Notice of Event(s) of Default provided by NeighborWorks to the Grantee that is the subject of the appeal.
- c. Any Other Relevant Documents such as notices, letters or other documents, including those regarding suspension, that have been provided by NeighborWorks to the Grantee and are the subject of the appeal, or are relevant to the appeal.

D. NeighborWorks Process

1. NFMFC Director Provides Information

- a. Grantee File. Once the Grantee's Appeal Filing documents have been received the NFMFC Director will provide to the CEO or designee all relevant documents contained in the Grantee's file.
- b. Summary. The NFMFC Director or designee will prepare a summary answering the steps taken by NeighborWorks to support the Grantee in remedying the Event(s) of Default, whether the Grantee has taken good faith efforts to remedy the Events of Default, and a response to the Grantee's defense against the consequence for significant deficiencies that were taken.

2. CEO or Designee Reviews All Information

- a. Reviews Grantee Appeal Filings Documents and NFMFC Director Summary
- b. Discussions with Grantee, NFMFC Director and/or Others. During the CEO or Designee review process the following may occur:
  - (1) Discussion with the Grantee by telephone, email or letter about information provided, seek responses to questions, or ask for additional information or documentation
  - (2) Discussion of the appeal with the NFMFC Director or other relevant NeighborWorks staff and consultants by telephone, email or letter about information provided, seek responses to questions, or ask for additional information or documentation
  - (3) Schedule a meeting by teleconference, in-person at NeighborWorks' office, or on-site at the Grantee's offices, and determine the Grantee managers or staff, and NeighborWorks staff and consultants, whose participation is mandatory
- c. The CEO or Designee will consider the following factors:
  - (1) Whether the Appeal was filed in a timely manner
  - (2) Whether the Grantee has provided all required documents and information



- (3) Whether the Grantee made good faith efforts to remedy Event(s) of Default
- (4) The defense provided by the Grantee
- (5) Whether consequences should be rescinded or modified in the best interest of the clientele served by the Grantee
- (6) Whether consequences can be rescinded or modified without jeopardizing the fiscal, administrative and management standards that must be safeguarded by NeighborWorks per United States Congressional requirements, mandates provided by HUD, or other legal or regulatory mandates

E. CEO or Designee Makes Appeal Determination

1. All Appeal determinations are final.
2. Within 30 days of receipt of the complete Appeal documentation from Grantee, the CEO or Designee will make Appeal determinations based on a standard of clear and convincing evidence after receiving all documents, including the Grantee Appeal Filing, the NeighborWorks file, the NFMDC Director summary, and any conversations or meetings.
3. Possible Determinations
  - a. Filing is Premature. It is determined that Grantee has not remedied compliance measures within the given time frames. Grantee may refile once all eligibility requirements are met.
  - b. Filing is Not Timely. Grantee does not submit the Appeal Filing documentation within the seven days of the Notice of Default. Grantee may refile only if the CEO or Designee finds that timely filing was prevented by exigent circumstances that could not have been anticipated.
  - c. Filing is Not Complete. Grantee has not submitted all required documents. Grantee may refile only if the CEO or Designee finds that a complete filing was prevented by exigent circumstances that could not have been anticipated.
  - d. No Good Faith Effort to Remedy. Grantee has not demonstrated a good faith effort to remedy the Event(s) of Default in question. Grantee may not refile any appeal.
  - e. Appeal is Denied. Grantee has not demonstrated that the consequences for significant deficiencies are unsupported or unjustified. Grantee may not refile any appeal.
  - f. Appeal is Granted. Grantee has demonstrated that some or all of the consequences for significant deficiencies should not have been determined. The CEO or Designee will notify the Grantee and NFMDC Director in writing per Subsection 4 below of the modifications to be made and the time frame in which they are to occur.

4. Written Determination. The CEO or Designee will provide in writing to the Grantee and the NFMC Director the determination and reason it was made. The CEO or Designee may also do the following:
  - a. Determine if the Grantee must or should undergo designated training.
  - b. Determine if any NFMC or other NeighborWorks staff or consultants need any guidance or professional development trainings to enhance their work.
  - c. Determine if any additional Grantee monitoring or support is required.

## VI. Appendices

### Appendix A: National Industry Standards for Foreclosure Intervention

# National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty



## National Industry Foreclosure Counseling Standards

The National Industry Standards for Homeownership Education and Counseling allow organizations and homeownership professionals to demonstrate that all clients receive consistent, quality service in homeownership education and counseling. The standards create a level of consistency in the industry and add to the professionalism of homeownership educators and counselors.

As the link between sustainable homeownership and counseling/education becomes increasingly clear, now more than ever the housing industry recognizes the need to ensure high quality education and counseling for households throughout the country. Seizing on the ever-changing market conditions, in 2005 a National Advisory Council (see Exhibit C for a list of member organizations) collaborated with other industry partners such as homeownership professionals; non-profit executive directors; local, state and national housing counseling organizations; financial institutions, mortgage insurance institutions, GSEs<sup>1</sup> and government entities to develop National Homeownership Industry Standards (including benchmark recommendations) and National Industry Code of Ethics and Conduct for Homeownership Professionals.

Organizations, counselors and educators are encouraged to endorse and adopt the voluntary National Industry Standards and National Industry Code of Ethics and Conduct. These standards are a critical first step in evolving efforts to professionalize and elevate the visibility of the homeownership education and counseling industry.

## How to Utilize National Industry Foreclosure Counseling Standards

**Organizations Providing Foreclosure Intervention Counseling:** Organizations providing services in the highly-specialized area of foreclosure intervention counseling are encouraged to endorse and adopt the National Industry Standards for Homeownership Counseling-Foreclosure Intervention Specialty and sign the National Industry Code of Ethics and Conduct. At a minimum, organizations should integrate the recommended benchmarks from the National Industry Foreclosure Counseling Standards into their everyday business operations. Organizations and individual counselors are encouraged to strive to exceed the benchmarks.

The National Industry Foreclosure Counseling Standards are integral to the National Industry Standards for Homeownership Education and Counseling and the National Industry Code of Ethics and Conduct. The Foreclosure Counseling Standards are integrated into the National Industry Standards for Homeownership Education and Counseling as an added specialty that counseling organizations can adopt, based on service delivery. For example, if an organization provides comprehensive services including pre-purchase education, counseling and foreclosure intervention, they will be encouraged to adopt the standards in all three categories (homeownership education, homeownership counseling, foreclosure counseling). For those organizations that only provide foreclosure intervention counseling, this affords the opportunity to

<sup>1</sup> GSE is an acronym for government-sponsored enterprise.

## National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty

adopt the National Foreclosure Counseling Standards directly related to that specialty, along with signing the National Industry Code of Ethics and Conduct.

Many organizations that currently provide foreclosure intervention counseling may find their programs meet or exceed the recommended benchmarks for industry standards and can readily adopt these National Industry Standards and National Industry Code of Ethics and Conduct.

For more information on how to demonstrate adoption of the National Industry Standards for Homeownership Counseling-Foreclosure Intervention Specialty and the National Industry Code of Ethics and Conduct, visit [www.homeownershipstandards.com](http://www.homeownershipstandards.com).

**Purpose of Standards:** To ensure consistency in the quality of foreclosure intervention counseling efforts nationwide, and adopt industry best practices.

In order to best serve clients, organizations providing homeownership counseling and individual homeownership counselors providing foreclosure intervention services agree to adopt the following:

### Core Operating Standards

1. **Competency:** Possess a strong knowledge in the area of mortgage default and/or foreclosure intervention counseling, specifically relating to the current industry practices of loss mitigation to include loan repayment, forbearance, modification, refinance, loan assumption, short sale, deed-in-lieu, community referrals, and other remedies available to the homeowner to avoid foreclosure. The counselor should understand the structure of the primary and secondary markets, the collection and loss mitigation functions of those entities collecting mortgage payments, financial management and budgeting, and be familiar with state and federal regulations regarding the foreclosure process. The counselor should possess the skills to obtain pertinent client information, analyze financial and property data and draft a comprehensive written Action Plan (see Exhibit B) based on the client's goals outlining the resultant recommendations for foreclosure avoidance or sale.

**Recommended Benchmark:** Individuals new to the field of foreclosure intervention counseling should obtain appropriate orientation, introductory level training and prerequisite curricula during the initial 6-months of employment.

**Recommended Benchmark:** Those counselors new to foreclosure intervention and default counseling should (prior to seeing clients) be involved in an on the job training/coaching/mentoring program for at least 90 days.

2. **Skills:** Exhibit professional communication (written and verbal), organizational, listening, customer service, cultural competency and time management skills. Foreclosure Intervention Counselors must demonstrate a "hands-on" knowledge of the remedies available to the homeowner to avoid foreclosure including negotiation and critical thinking skills, and demonstrate an ability to provide timely crisis counseling to families in need.

## National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty

3. **Training:** As soon as possible but no later than within 12-months of being hired, Foreclosure Intervention Counselors will obtain minimum training equivalent to no less than 30 hours of facilitated instruction, utilizing a variety of methods including lecture, interactive, demonstration, on-line and case study.

**Recommended Benchmark:** Those counselors new to foreclosure intervention and default counseling should (prior to seeing clients) be involved in an on the job training/coaching/mentoring program for at least 90 days. To best meet the client's needs in this highly specialized field, facilitated training in foreclosure intervention and default counseling should be completed within six months and no later than one year to obtain the competency and skills listed under the Core Operating Standards.

4. **Certification:** Certification is considered critical in the industry. Subsequent to the requisite training, a comprehensive exam consisting of approximately 100 questions must be administered with a demonstrated proficiency of 80% passing. The exam will cover foreclosure intervention counseling competency content meeting the standards listed under the Core Operating Standards and demonstrated in the related activities identified in Exhibit A herein.

**Recommended Benchmark:** Certification should be completed as soon as reasonably possible, but no later than within 18-months of employment.

**Continuing Education:** Complete a minimum of 10 hours of continuing education annually in subjects primarily relative to the core content and delivery of foreclosure intervention and default counseling.

**Recommended Benchmark:** Professional certification continuing education requirements may meet or exceed this standard.

5. **Foreclosure Intervention Counseling Operations:** Implement effective program operations for foreclosure counseling including techniques, outreach and marketing of services available to the community, partnership building with private sector partners including servicers and lenders, fundraising, customer service, customer tracking, reporting, program evaluation, and program design.

**Recommended Benchmark:** These skills can be obtained through training and experience.

6. **Code of Ethics and Conduct Statement:** Sign and adopt the written National Industry Code of Ethics and Conduct policy that specifically addresses any real and apparent conflicts of interest, guidelines for professional behavior, privacy and confidentiality, payment for services, consultation, referrals, quality assurance and integrity.

# National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty

## Performance Standards

1. **Delivery:** Perform individual, personalized foreclosure intervention and default counseling to clients.

**Recommended Benchmark:** Content, delivery and format of the counseling is tailored to meet the needs of the client. Content and delivery should be done so in a culturally competent manner and in the preferred language of the client. Use of a translator or referral to an agency that provides adequate service in the appropriate language is recommended.

**Recommended Benchmark:** Clients should be counseled immediately (if possible) particularly when a high degree of certainty that foreclosure is imminent. At a minimum, upon request, clients should receive acknowledgement of inquiry within 48 hours of initial contact. When initial contact is made, clients should be assessed to determine the status of the client's mortgage and client urgency. Those clients that have a high degree of foreclosure should be prioritized for appointments.

**Recommended Benchmark:** Foreclosure Intervention Counselors must complete appropriate intake of client information to make proper and timely recommendations to the client to assist in avoiding foreclosure. Counselors must provide a comprehensive written Action Plan (see Exhibit B) to the client summarizing a statement of the problem, steps to be taken by the client, steps to be taken by the counselor, and the timeline necessary to accomplish these tasks.

**Recommended Benchmark:** Foreclosure Intervention Counselors should always instruct the client of the importance of making and keeping contact with the lender. Where possible, the counselor should attempt to contact the lender on behalf of the client to assess status and to further inform the lender of the proposed recommendations as specified in the written Action Plan (see Exhibit B).

**Recommended Benchmark:** Active, open client files should be closely monitored, with timely follow-up in accordance with the stated Action Plan. When no contact from the client has taken place for 3 consecutive months, the file may be classified as inactive.

**Recommended Benchmark:** Where there is no mortgage delinquency, Foreclosure Intervention Counselors should provide basic financial management or credit counseling and encourage further homeownership education as a deterrent to future mortgage default.

**Recommended Benchmark:** Client satisfaction surveys are used to evaluate the effectiveness of the counseling.



## National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty

2. **Expected Counseling Outcome:** Upon completion of foreclosure intervention counseling, clients will understand the various options available to assist them to avoid foreclosure, the need to keep constant communication with their lender, and will have received a written Action Plan (see Exhibit B) outlining the necessary steps to achieve their desired objectives. After counseling, if the client determines that either they cannot afford to keep their home or no longer desire to keep their home, they will receive information relative to each of these options and how this action might have resultant civil and/or tax liability.

**Recommended Benchmark:** Foreclosure Intervention Counselor should collect pertinent information as outlined in Exhibit A.

**Recommended Benchmark:** Comprehensive, effective delivery should be determined based upon the individual needs of the client to reach their desired outcome. The minimum standard for delivery of individual foreclosure intervention counseling should be at least one session of at least 30-60 minutes, utilizing either face-to-face or telephonic mediums.

3. **Recordkeeping:** Collect and maintain specific information from clients in accordance with all laws and governing organizations (i.e., HUD, Intermediary, etc.)

**Recommended Benchmark:** An intake form should be completed and collected with client profile information to include contact information, services sought/provided, household size, ethnicity (optional), and household income. Additional information to collect from the client is outlined in Exhibit A.

**Recommended Benchmark:** Aggregate information for clients should be maintained including total number of persons served and other demographic information.

**Recommended Benchmark:** A checklist should be utilized to ensure files are consistently maintained and meet reporting standards and quality assurance.

**Recommended Benchmark:** Files should be maintained in secured file cabinets and/or electronically in a secure data system in order to protect client privacy.

**Recommended Benchmark:** Files should be maintained for a minimum of three (3) years. Longer file retention requirements may be required if the household has received grant or loan assistance through state or federal subsidy programs. At the time of disposal, files should be shredded or electronic copies should be deleted.

4. **Reporting:** Utilize an electronic Client Management System for collecting and reporting data.

**Recommended Benchmark:** An electronic method in place for collecting reporting data may be as basic as an Excel spreadsheet or Access database application that captures needed data fields from each client, but *preferably* should be a software application



## National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty

compliant with HUD's CMS vendor list or equivalent. Visit [www.hud.gov](http://www.hud.gov) and refer to HUD's CMS vendor list.

5. **Service Thresholds:** Establish referral networks for individuals and families seeking services that the Foreclosure Intervention Counselor does not provide or possess sufficient competency to adequately and effectively deliver.

**Recommended Benchmark:** The Department of Housing and Urban Development (HUD) maintains a list of organizations and corresponding services ([www.hud.gov](http://www.hud.gov)). In addition, legal aid, tax professionals and other state or local agencies that may provide needed services aligned with foreclosure intervention including rescue funds should be sought.

To adopt the National Industry Foreclosure Counseling Standards  
and the National Industry Code of Ethics and Conduct visit

[www.homeownershipstandards.com](http://www.homeownershipstandards.com)

For more information and to download a copy of the National Industry Standards for Homeownership Education and Counseling visit [www.homeownershipstandards.com](http://www.homeownershipstandards.com) or call 1-866-472-9477

## Exhibit A

### Minimum Standard Activities for Foreclosure Intervention and Default Counseling

1. Perform intake by gathering baseline information from client including:
  - a. Client's goals/intent
  - b. Reason for delinquency or default
  - c. Client's financial situation and possibility of workout
  - d. Client's loan type
  - e. Home's value/condition
  - f. Credit report
  - g. Original loan documents, if available
  - h. Demographic information (contact information, household size, household income, ethnicity (optional), etc.
2. Assess client's mortgage, payment status and urgency in the delinquency and foreclosure process
3. Develop loss mitigation options
4. Communicate with the servicer\*
5. Submit loss mitigation package to servicer\*
6. Negotiate with junior lien holders and Homeowners Association\*
7. Create written action plan for foreclosure avoidance or client's preference
8. Provide follow up to client
9. Provide client with contact information for additional community services that might be available.

\* When Applicable. Foreclosure Counseling can include a range of the activities depending on the client's financial situation and the severity of the mortgage delinquency. Specifically, activities 4, 5 and/or 6 from Exhibit A vary, and may not always be performed for a client.

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## EXHIBIT B

### Foreclosure Intervention Counseling- Recommended Content for Written Action Plan

#### Recommended Features of the Action Plan

- State briefly why the homeowner is delinquent or in danger of becoming delinquent, including the involuntary inability to pay, unexpected increase in expenses, decrease in income, loan reset and/or other factor.
- Include an assessment of the property's condition and a discussion and calculation of equity, if any.
- Include a financial assessment that leads to the recommendations for resolving the delinquency (assuming that the client wants to and can afford to keep the house). Otherwise, discuss foreclosure in general, sale of the property, deed in lieu, short sale and possible tax consequences and/or deficiency judgment issues.
- State what steps the homeowner will take to resolve the delinquency and what steps the counselor will take to assist in this process.
- Include other contact information for community referrals which may be able to assist the client.
- Issued within 24 hours of counseling session (and immediately if face-to-face)

## National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty



### Exhibit C

#### National Advisory Council convened by NCHEC<sup>2</sup>

The National Industry Standards were developed by a broad representation of industry stakeholders comprising the National Advisory Council (facilitated by NCHEC). Companies and organizations include:

Bank of America  
Chase  
Chrysalis Consulting Group, LLC  
Citi  
Community Development Corporation of Long Island, Inc.  
Consumer Credit Counseling Services of San Francisco  
Countrywide Financial Corporation  
Fannie Mae  
The Housing Partnership Network  
Federal Reserve Board  
Freddie Mac  
Minnesota Housing  
Mortgage and Credit Center  
Mortgage Guaranty Insurance Corporation (MGIC)  
NAREB-National Investment Division (NID)  
National Association of Realtors<sup>®</sup>  
National Council of State Housing Finance Agencies  
National Council of La Raza (NCLR)  
NeighborWorks<sup>®</sup> America  
NHS of Great Falls  
University of North Carolina Chapel Hill  
U.S. Department of Housing and Urban Development  
Wells Fargo

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<sup>2</sup> NCHEC is an acronym for the NeighborWorks<sup>®</sup> Center for Homeownership Education and Counseling

## Appendix B: NFMC Draw Requirements

**1. Draw 1** (Draw 1 = 70% of PRS; 35% of Counseling; 35% of OO) For the typical Grantee<sup>1</sup>, this represents 40.5% of its total NFMC award.

Released upon ratification of Grant Agreement. Round 5 must be closed out before the first draw of Round 6 will be released.

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**2. Draw 2** (Draw 2 = 15% of PRS; 30% of Counseling; 30% of OO)  
Total disbursed to Grantee at this point is 85% of PRS; 65% of counseling; 65% of OO. For the typical Grantee<sup>1</sup>, this represents 68% of its total NFMC award.

Released when enough clients have been counseled to total 25% of the Counseling Award dollar amount and:

- A. Grantee has no significant compliance findings
  - B. Grantee has submitted proof of the requisite match funds
  - C. Grantee is within allowable variances by geographic area<sup>2</sup>
  - D. Grantees with contracted requirements to provide a certain amount of counseling sessions in low-income or minority zip codes, or to low-income or minority homeowners, will be required to achieve at least the contracted percentage of production in those areas
- 

**3. Draw 3** (Draw 3 = 15% of PRS; 30% of Counseling; 30% of OO)  
Total disbursed to Grantee at this point is 100% of PRS; 95% of counseling; 95% of OO. For the typical Grantee<sup>1</sup>, this represents 96% of its total NFMC award.

Released when enough clients have been counseled to total 60% of the Counseling Award dollar amount<sup>3</sup> and:

- A. Grantee has no significant compliance findings
  - B. Grantee has submitted proof of the requisite match funds
  - C. Grantee is within allowable variances by geographic area<sup>2</sup>
  - D. Grantees with contracted requirements to provide a certain amount of counseling sessions in low-income or minority zip codes, or to low-income or minority homeowners, will be required to achieve at least the contracted percentage of production in those areas
- 

**4. Draw 4** (Draw 3 = 2.5% of counseling; 2.5% of OO)  
Total disbursed to Grantee is 100% of PRS; 97.5% of counseling; 97.5% of OO. For the typical Grantee<sup>1</sup>, this represents 98% of its total NFMC award.

Released when:

- A. Grantee has no significant compliance findings
- B. Grantee has submitted proof of the requisite match funds
- C. Grantee has counseled enough borrowers to fully spend down 100% of the dollar amount awarded to it in Counseling Funds<sup>3</sup>. Note: NFMC will allow up to 5% of the Grantee's counseling award to be used to cover duplicate clients that were not self-duplicates. This will be

applied at Draw 4 and may reduce the dollar amount and/or units of counseling needing to be achieved before releasing Draw 4.

- D. At least 75% of the Grantee's production was provided in Areas of Greatest need. If the Grantee was contracted to provide less than 75% of its units of counseling in Areas of Greatest need, it must be within 5% of its contracted percentage. *For example, if a Grantee was contracted to provide 65% of its total units of counseling in Areas of Greatest Need, it must provide at least 60% in AGN to close out the grant.*
- E. Grantees with contracted requirements to provide a certain amount of counseling sessions in low-income or minority zip codes, or to low-income or minority homeowners, will be required to achieve at least the contracted percentage of production in those areas
- F. Grantee has completed its Final NFMC Programmatic Report

### **Exceptions to be considered:**

The executed Grant Agreements requires that Grantees meet certain goals. The following provisions have been established to allow Grantees to draw down some of their NFMC funds and continue providing counseling services if they have not met the contracted requirements but have sufficiently documented the reasons why and have proven they have made best efforts to achieve their goals.

At the time of the 2<sup>nd</sup> draw, If Grantee is not within allowable variances geographic area, or (if applicable) by service to low-income and minority homeowners or zip codes, Grantee must send an e-mail detailing its plan to get back on track. Once this is reviewed and accepted, NFMC will release Draw 2.

At the time of the 3<sup>rd</sup> draw, if Grantee is unable to meet the geographic area requirements, Grantee must send an e-mail giving a satisfactory explanation for how they will make best efforts get back on track. Once this is reviewed and accepted, NFMC will release half of Draw 3.

To receive the second half of the third draw, Grantee must upload additional units of counseling, and NFMC staff must analyze progress to date on the geographic areas where Grantee was below acceptable variances at the time of the 3<sup>rd</sup> draw. If Grantee has increased production so it is within the variance, then the second half of the third draw will be authorized.

If Grantee has not increased production to be within the variance, NFMC staff will review the documented best efforts reported by the Grantee to address the variance. Factors that may allow a waiver of the Grant Agreement requirements during this stage of review would include: the geographic area is not an Area of Greatest Need, the geographic area is being served satisfactorily by the program overall, Grantee makes up less than 15% of the overall proposed production for that geographic area, production in immediately adjacent MSAs or rural areas of a state make up for the units of counseling not delivered in the contracted geographic area, documentation that clients were served in the under-reported geographic areas but billed to another funding source, or documentation that specific outreach and efforts to affiliate new sub-Grantees (if applicable) have not produced the required volume of borrowers to allow Grantee to meet its goal.

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<sup>1</sup>. This percentage may vary slightly, as NeighborWorks Organizations were not eligible to apply for Operational Oversight funds.

<sup>2</sup> To determine if Grantee is within allowable variances by geographic area, NFMC looks at the following:

- For geographic variances, Grantee must have achieved at least 75% of the units of counseling expected at each draw for each MSA and rural area of a state it was contracted to serve for Draw 2 and 50% for Draw 3. NFMC will not penalize Grantees that achieve more than 125% of its counseling goals, provided this does not cause other geographic areas Grantee was contracted to serve to fall below its goals.
- *Draw 2 Example: If a Grantee received a counseling award of \$120,000 and was contracted to provide 800 units of counseling in the Atlanta MSA, it would reach the Draw 2 trigger when it had uploaded enough units of counseling to total \$30,000 (or 25% of the counseling award). If at least 75% of those units were provided in the Atlanta MSA, the Grantee is considered to be within the allowable variance. Draw 3 Example: That same Grantee would reach the Draw 3 trigger when it had uploaded enough units of counseling to total \$72,000 (or 60% of the counseling award). If at least 50% of those units were provided in the Atlanta MSA, the Grantee is considered to be within the allowable variance. If it is determined that Grantee is under-producing in rural areas, NFMC will analyze whether the Grantee has produced units of counseling in rural areas of MSAs using the USDA 502 rural definition. If this is the case, units of counseling that fall within these areas can be counted toward the Grantee's rural production.*

<sup>3</sup> To determine if Grantee has counseled enough borrowers to spend down 25%, 60% or 100% of its counseling funds, NFMC multiplies the number of units produced at Level 1 by \$150 and adds to that the number of units produced at Level 2 by \$300. The resulting amount must equal or exceed 25%, 60% or 100% of the Grantee's counseling award, depending on the Draw being released.